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KAN-DI-KI, LLC, d/b/a DIAGNOSTIC  
13 LABORATORIES

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16

17 KAN-DI-KI, LLC, d/b/a  
DIAGNOSTIC LABORATORIES, a  
18 California limited liability company,

19 Plaintiff,

20 v.

21 B.O.N. CLINICAL  
LABORATORIES, LTD., a Nevada  
22 corporation,

23 Defendant.  
24  
25  
26  
27  
28

**CASE NO. CV 15-05199 SVW (PLA)**

**~~PROPOSED~~ PROTECTIVE  
ORDER**

[Discovery Matter: Referred to  
Magistrate Judge Paul L. Abrams]

1 The Court has received, read, and considered the parties' Stipulation for  
2 Entry of Protective Order. In light of the parties' Stipulation, and good cause  
3 appearing therefor, IT IS HEREBY ORDERED as follows:

4 A. Scope

5 1. This Protective Order shall govern the handling and disclosure of all  
6 documents, things and information produced, furnished or created during the course  
7 of this action, including any materials or information sought from a non-party who  
8 receives a subpoena in connection with this action or otherwise produces materials  
9 or information in this action. The information protected includes, but is not limited  
10 to: materials and information produced in response to requests for production of  
11 documents; answers to interrogatories; answers to requests for admission; responses  
12 to requests for production of documents; deposition testimony, exhibits, transcripts,  
13 and videotapes; all other discovery, pleadings, briefs, memoranda, affidavits,  
14 transcripts; and other materials furnished by or on behalf of any party to this action.

15 2. This Protective Order applies to all documents and information  
16 produced in this action regardless of whether such document or information was  
17 produced prior to or after entry of this Protective Order.

18 3. Nothing in this Protective Order is intended to conflict with the  
19 applicable Local Rules. Insofar as anything in this Protective Order could be  
20 interpreted as conflicting with the applicable Local Rules, the Local Rules will  
21 govern. Any use of confidential information during a court hearing or at trial shall  
22 be governed by the orders of the presiding judge.

23 4. Nothing in this Protective Order, nor the production of any documents  
24 or disclosure of any information pursuant to this Protective Order, shall be deemed  
25 to have the effect of (i) an admission or waiver, including waiver under the rules of  
26 evidence or any applicable common law or statutory privilege or work product  
27 protection, by any party or other subscriber to this Protective Order; (ii) altering the  
28 confidentiality or nonconfidentiality of any such information; or (iii) altering any

1 existing obligation of any party or other subscriber, or the absence of such  
2 obligation.

3 B. Confidential and Highly Confidential Information

4 5. "Confidential Information" shall include non-public information,  
5 including but not limited to, personal, confidential, or proprietary information that  
6 requires the protections provided in this Protective Order.

7 6. "Highly Confidential Information" shall include non-public,  
8 commercially or personally sensitive or commercially valuable information that a  
9 producing party in good faith believes is likely to cause injury or loss to the  
10 producing party or to another person or entity if it is disclosed other than as  
11 permitted by this Protective Order.

12 7. Information prepared or derived by utilizing Confidential or Highly  
13 Confidential documents or testimony shall also be considered "Confidential" or  
14 "Highly Confidential" pursuant to this Protective Order.

15 8. Any party may designate as "Confidential" or "Highly Confidential"  
16 any material or testimony disclosed, produced, or created in the course of this  
17 litigation if such party believes in good faith that such material or testimony  
18 contains personal, confidential, proprietary, or commercially sensitive information  
19 that requires the protections provided for in this Protective Order. Said designation  
20 shall be done in the manner set forth in this Protective Order, or by written  
21 agreement of the parties.

22 9. Where (i) a party (other than the designating party) already possessed,  
23 or has access to from sources other than the disclosing party as of the date of this  
24 Protective Order, copies of documents or materials that have been designated  
25 Confidential or Highly Confidential, and (ii) such copies were as of the date of this  
26 Protective Order (and have remained at all relevant times) possessed by the party  
27 without being subject to any restrictions relating to confidentiality or right of  
28 dissemination, then such copies shall not be considered Confidential or Highly

1 Confidential under the terms of this Protective Order.

2 10. Material or testimony designated Confidential or Highly Confidential  
3 shall be used or disclosed solely for the purposes of this litigation, including  
4 without limitation written discovery, depositions, preparation of motions, trial and  
5 preparation for trial, appeals of this lawsuit, settlement discussions and  
6 negotiations, or any form of alternative dispute resolution of this litigation.  
7 Confidential Information and Highly Confidential Information shall be used for no  
8 other purpose whatsoever. Nothing in this Protective Order shall preclude any  
9 party or its representative from discussing the progress, theories, or legal strategies  
10 in this litigation with persons not covered by this Protective Order, provided that  
11 Confidential Information or Highly Confidential Information is not disclosed.  
12 Confidential Information may be disclosed only in accordance with Paragraph 14.  
13 Highly Confidential Information may be disclosed only in accordance with  
14 Paragraph 15.

15 11. All or any part of a document or a tangible item disclosed, produced,  
16 or created by any party in the litigation may be designated Confidential or Highly  
17 Confidential by the disclosing party by marking the words "Confidential" or  
18 "Highly Confidential" on the face of the document and each page so designated, or  
19 in the case of electronic data (*e.g.*, floppy disks, DVD, or CD-Rom), by the  
20 disclosing party placing the same confidentiality legend on the surface of the floppy  
21 disk, DVD, or CD-Rom.

22 C. Designating Deposition Testimony

23 12. Any party may designate deposition testimony, or any portion or  
24 exhibit thereof, as Confidential or Highly Confidential by advising all parties in  
25 attendance of such fact, either during the deposition or after (but no later than ten  
26 (10) days after the transcript is available). Any party may designate documents or  
27 other materials produced by a non-party as "Confidential" or "Highly Confidential"  
28 by notifying all parties and the non-party of such designation no later than ten (10)

1 days after receipt of such documents or materials by the designating party. Such  
2 notice shall be made with reference to the Bates numbers or other sufficiently  
3 definite description of the documents designated, and shall specify the Confidential  
4 or Highly Confidential designation as appropriate.

5 D. Non-Party Designation of Confidential Information

6 13. Any non-party may designate any discovery material or testimony  
7 taken from it, whether pursuant to subpoena or by agreement, as “Confidential” or  
8 “Highly Confidential” pursuant to the terms of this Protective Order. In addition, in  
9 the case of deposition testimony, such designation may be made orally on the  
10 record at the relevant deposition. Discovery material or testimony designated  
11 “Confidential” or “Highly Confidential” by a non-party shall thereafter be handled  
12 in accordance with the requirements of this Protective Order.

13 E. Restrictions on the Disclosure of Confidential Information

14 14. Confidential Information and the substance of the same may be  
15 disclosed only to:

- 16 (a) Counsel of record for the parties and their supporting personnel  
17 who are assisting in the prosecution, defense, or settlement of  
18 this action;
- 19 (b) The individual parties to this action;
- 20 (c) Any present or former officers, directors, and employees of the  
21 parties to this action;
- 22 (d) The author of the document, original source of information, and  
23 recipient of document;
- 24 (e) Deposition witnesses in preparation for or during the course of  
25 their deposition testimony, or trial witnesses in preparation for  
26 or during the course of their trial testimony;
- 27 (f) Expert witnesses and other consultants (including their  
28 supporting personnel) who are consulted by counsel for any

1 party to this action in preparation of this case, provided that,  
2 prior to disclosure of any protected information to any such  
3 expert or consultant, the expert or consultant shall be provided  
4 with a copy of this Agreement and execute the “Undertaking of  
5 Qualified Recipient Pursuant to Protective Order” attached as  
6 Exhibit A hereto. Any such “Undertaking of Qualified  
7 Recipient Pursuant to Protective Order” shall be signed and  
8 circulated to all parties prior to the disclosure of any protected  
9 information to the signor; and

- 10 (g) The Court and Court personnel; court reporters and their  
11 personnel employed in connection with this action; and any  
12 other person only upon order of the Court or upon prior written  
13 consent of the designating party.

14 F. Restrictions on the Disclosure of Highly Confidential Information

15 15. Highly Confidential Information and the substance of the same may be  
16 disclosed only to:

- 17 (a) Expert witnesses and other consultants (including their  
18 supporting personnel) who are consulted by counsel for any  
19 party to this action in preparation of this case, provided that,  
20 prior to disclosure of any protected information to any such  
21 expert or consultant, the expert or consultant shall be provided  
22 with a copy of this Agreement and execute the “Undertaking of  
23 Qualified Recipient Pursuant to Protective Order” attached as  
24 Exhibit A hereto. Any such “Undertaking of Qualified  
25 Recipient Pursuant to Protective Order” shall be signed and  
26 circulated to all parties prior to the disclosure of any protected  
27 information to the signor;

- 28 (b) Outside counsel for parties that have appeared in this action,

1 regular employees of such counsel, and outside service  
2 providers hired by such counsel;

3 (c) The author of the document, original source of information, and  
4 recipient of document; and

5 (d) The Court and Court personnel; court reporters and their  
6 personnel employed in connection with this action; and any  
7 other person only upon order of the Court or upon prior written  
8 consent of the designating party.

9 G. Court Filings

10 16. If any person wishes to submit any Confidential or Highly  
11 Confidential Information to the Court, the person shall, unless directed by the Court  
12 to do otherwise, seek approval from the Court to file the document(s) under seal  
13 and comply with all of the requirements set forth in Local Rule 79-5, including the  
14 procedures requiring the electronic filing of under seal documents.

15 H. Use of Confidential Information at Pre-Trial or Trial Proceedings

16 17. This Protective Order does not govern the conditions under which  
17 Confidential or Highly Confidential Information can be used at pre-trial or trial  
18 proceedings. The parties, however, stipulate to provide at least seven days notice to  
19 the designating party of any Confidential or Highly Confidential Information that  
20 the receiving party reasonably anticipates that it may use at a pre-trial hearing so  
21 that the designating party can take steps in advance of any such hearing to seek a  
22 separate protective order regarding the use or disclosure of such Confidential or  
23 Highly Confidential Information.

24 I. Inadvertent Failure to Designate

25 18. If a party produces information that it considers Confidential  
26 Information or Highly Confidential Information, in whole or in part, without the  
27 required designations, it may designate such information or documents or parts  
28 thereof after production.



1 J. Challenges to Confidentiality Designation

2 19. Within the discovery period established by the District Judge, any  
 3 party may challenge a designation of “Confidential” or “Highly Confidential,”  
 4 where it reasonably and in good faith believes that such designation is both  
 5 improper and inconsistent with the descriptions of Confidential Information and  
 6 Highly Confidential Information set forth herein, or where it can demonstrate that  
 7 the removal of such designation is necessary for the prosecution or defense of that  
 8 party’s case. The challenging party shall (i) serve written notice of its objection to  
 9 the designating party, identifying specifically the information as to which the  
 10 challenging party wishes to have the designation removed, and (ii) make a good-  
 11 faith effort as required by the rules of Court to resolve its dispute with the  
 12 designating party. Only after completion of the foregoing, the challenging party  
 13 may move the Court for an order vacating the designation pursuant to the  
 14 procedures set forth in Local Rule 37. Should the parties need to file the Joint  
 15 Stipulation required by Local Rule 37 under seal, the parties shall file a stipulation  
 16 setting forth good cause as to why the Joint Stipulation or portions thereof should  
 17 be filed under seal. While such a motion is pending, the information in question  
 18 shall be treated as it was originally designated (i.e., “Confidential” or “Highly  
 19 Confidential”) pursuant to this Protective Order.

20 K. Inadvertent Production of Privileged Materials

21 20. If documents or testimony designated Confidential or Highly  
 22 Confidential that is subject to a claim of attorney-client privilege, attorney work  
 23 product, or any other privilege or immunity or ground on which production of that  
 24 information should not be made to any Party (“Inadvertent Production Material”) is  
 25 inadvertently produced to that Party or Parties, such inadvertent production shall in  
 26 no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of  
 27 attorney-client privilege, work product, or other privilege or immunity.

28 a. A claim of inadvertent production shall constitute a



1 representation by that producing party that the Inadvertent Production Material has  
2 been reviewed by an attorney for such producing party and that there is a good-faith  
3 basis for such claim of inadvertent production.

4           b. If a claim of inadvertent production is made pursuant to this  
5 Protective Order, with respect to documents then in the custody of another party,  
6 the party possessing the Inadvertent Production Material shall: (i) refrain from any  
7 further examination or disclosure of the claimed Inadvertent Production Material;  
8 (ii) if requested, promptly make a good-faith effort to return the claimed Inadvertent  
9 Production Material and all copies thereof (including summaries and excerpts) to  
10 counsel for the Producing Party, or destroy all such claimed Inadvertent Production  
11 Material (including summaries and excerpts) and all copies thereof, and certify in  
12 writing to that fact; and (iii) not use the Inadvertent Production Material for any  
13 purpose until further order of the Court.

14           c. A Party may move the Court for an order compelling production  
15 of the claimed Inadvertent Production Material in accordance with the applicable  
16 Local Rules; however, while such motion is pending, the discovery material in  
17 question shall be treated as Inadvertent Production Material, and such motion may  
18 not assert as a ground for entering such an order the fact or circumstance of the  
19 inadvertent production, nor shall such motion include or otherwise disclose, as an  
20 attachment, exhibit, or otherwise, the Inadvertent Production Material (or any  
21 portion thereof) that is the subject of such motion.

22 L. Disposition Upon Conclusion

23           21. Within 30 days after receiving notice of the entry of an order,  
24 judgment, or decree finally disposing of this litigation, or any other proceeding in  
25 which Confidential or Highly Confidential documents or testimony is permitted to  
26 be used, including the exhaustion of all possible appeals, and upon the written  
27 request of the producing party, all persons having received Confidential or Highly  
28 Confidential documents or testimony shall either (i) make a good-faith and

1 reasonable effort promptly to return such material and all copies thereof (including  
2 summaries, excerpts, and derivative works) to counsel for the producing party; or  
3 (ii) make a good-faith and reasonable effort promptly to destroy all such documents  
4 and testimony, and certify to that fact in writing to counsel for the producing party.  
5 However, counsel for the parties shall be entitled to retain court papers, deposition  
6 and trial transcripts, and litigation files (including attorney work product and  
7 discovery material containing Confidential or Highly Confidential documents or  
8 testimony), provided that such counsel, and employees of such counsel, shall  
9 maintain the confidentiality thereof and shall not disclose such court papers,  
10 depositions and trial transcripts, and litigation files (including attorney work  
11 product and discovery material containing Confidential or Highly Confidential  
12 documents or testimony) to any person except pursuant to a court order or  
13 agreement by the producing party or except as otherwise required by law. All  
14 materials returned to the parties or their counsel by the Court likewise shall be  
15 disposed of in accordance with this paragraph.

16 M. Subpoenas

17 22. If any person in possession of Confidential or Highly Confidential  
18 documents or testimony (the "Receiver") receives a subpoena or other compulsory  
19 process seeking the production or other disclosure of Confidential or Highly  
20 Confidential documents or testimony produced or designated as "Confidential" or  
21 "Highly Confidential" by a producing party other than the Receiver (collectively, a  
22 "Demand") while this Protective Order is in effect, the Receiver shall give written  
23 notice (by hand, email, or facsimile transmission) to counsel for the producing party  
24 within three business days of receipt of such Demand (or if a response to the  
25 Demand is due in less than three business days, at least 24 hours prior to the  
26 deadline for a response to the Demand), identifying the Confidential or Highly  
27 Confidential documents or testimony sought and enclosing a copy of the Demand,  
28 and must object to the production of the Confidential or Highly Confidential

1 documents or testimony on the grounds of the existence of this Protective Order.  
2 The burden of opposing the enforcement of the Demand will fall on the producing  
3 party. Nothing herein shall be construed as requiring the Receiver or anyone else  
4 covered by this Protective Order to challenge or appeal any order requiring  
5 production of Confidential or Highly Confidential documents or testimony covered  
6 by this Protective Order, or to subject itself to any penalties for noncompliance with  
7 any legal process or order, or to seek any relief from this Court or any other court.  
8 Compliance by the Receiver with any order directing production pursuant to a  
9 Demand of any Confidential or Highly Confidential documents or testimony will  
10 not constitute a violation of this Protective Order.

11 23. No Receiver shall reveal any Confidential or Highly Confidential  
12 documents or testimony, or the information contained therein, to anyone not  
13 entitled to receive such Confidential or Highly Confidential documents or  
14 testimony under the terms of this Protective Order. In the event that Confidential or  
15 Highly Confidential documents or testimony is disclosed to any person other than  
16 in the manner authorized by this Protective Order, or that any information comes to  
17 the Receiver's attention that may indicate there was or is likely to be a loss of  
18 confidentiality of any Confidential or Highly Confidential documents or testimony,  
19 the Receiver responsible for the disclosure or loss of confidentiality shall  
20 immediately inform the producing party of all pertinent facts relating to the  
21 disclosure or loss of confidentiality, including, if known, the name, address, and  
22 employer of each person to whom the disclosure was made. The Receiver  
23 responsible for the disclosure or loss of confidentiality shall also make reasonable  
24 efforts to prevent disclosure of Confidential or Highly Confidential documents or  
25 testimony by each unauthorized person who receives the information.

26 N. Jurisdiction

27 24. Unless prohibited by a statute, court order, or applicable rule, the  
28 parties may extend or modify deadlines under this Protective Order by written

1 stipulation amongst themselves or, where applicable, with third parties. The Court  
2 retains jurisdiction to amend or modify this Protective Order upon stipulation of the  
3 parties, motion by a party or non-party, or on its own motion.

4       25. This Protective Order, and any dispute arising out of or relating in any  
5 way to this Protective Order, whether in contract, tort or otherwise, shall be  
6 governed by and construed in accordance with the laws of the State of California,  
7 without regard to the conflict of laws principles. Each of the parties (a) irrevocably  
8 submits to the personal jurisdiction of any state or federal court sitting in Los  
9 Angeles, California as well as to the jurisdiction of all courts to which an appeal  
10 may be taken from such courts, in any suit, action or proceeding arising out of or  
11 relating to this Protective Order, (b) agrees that all claims in respect of such suit,  
12 action or proceeding shall be brought, heard and determined exclusively in the  
13 United States District Court, Central District of California (provided that, in the  
14 event that subject matter jurisdiction is unavailable in that court, then all such  
15 claims shall be brought, heard and determined exclusively in any other state or  
16 federal court sitting in Los Angeles, California), (c) agrees that he, she or it shall  
17 not attempt to deny or defeat such personal jurisdiction by motion or other request  
18 for leave from such court, (d) agrees not to bring any action or proceeding arising  
19 out of or relating to this Protective Order in any other court, and (e) expressly  
20 waives, and agrees not to plead or to make any claim that any such action or  
21 proceeding is subject (in whole or in part) to a jury trial. Each of the parties waives  
22 any defense of inconvenient forum to the maintenance of any action or proceeding  
23 brought in accordance with this paragraph. Each of the parties further agrees to  
24 waive any bond, surety or other security that might be required of any other party  
25 with respect to any action or proceeding concerning this Protective Order, including  
26 any appeal thereof. Each of the parties further consents and agrees that process in  
27 any suit, action or proceeding concerning this Protective Order may be served on  
28 such party by certified mail, return receipt requested, addressed to such party or

1 such party's registered agent in the state of its incorporation or organization, or in  
2 any other manner provided by law.

3 O. Right to Further Relief

4 26. The parties reserve the right to apply, pursuant to the Federal Rules of  
5 Civil Procedure or this Court's Local Rules, upon short notice, for an order seeking  
6 additional safeguards with respect to the use and handling of the discovery material  
7 or to modify the terms of this Protective Order.

8 27. This Protective Order is subject to revocation or modification by order  
9 of the Court upon written stipulation or motion of the parties. This Protective  
10 Order may be amended by the Court to prevent manifest injustice, and shall be  
11 amended to conform to any future amendments of the Federal Rules of Civil  
12 Procedure or this Court's Local Rules.

13 P. Order to Remain in Force

14 28. This Protective Order and the agreements embodied herein shall  
15 survive the termination of this action and continue in full force and effect.

16  
17 IT IS SO ORDERED.

18  
19 Dated: 12/15/15



20 THE HONORABLE PAUL L. ABRAMS  
21 UNITED STATES MAGISTRATE JUDGE  
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**EXHIBIT A**

AFFIDAVIT OF \_\_\_\_\_, being  
duly sworn and personally appearing before the undersigned attesting officer, duly  
authorized by law to administer oaths, deposes and says that the within statements  
are true and correct:

1.

I have read the Confidentiality and Protective Order attached hereto, and I  
understand its terms and meanings.

2.

I agree that my signature below submits me to the jurisdiction of the United  
States District Court, Central District of California, in the above captioned case and  
binds me to the provisions of the Stipulated Confidentiality and Protective Order,  
including to all promises undertaken in the Order, as if originally agreed by me.

Further Affiant sayeth not.

This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
AFFIANT

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Name: \_\_\_\_\_

No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_